IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 470 OF 2004

Shri Ramswamy
@ Gabar S/o. Echlai ...Petitioner.

V/s

State of Maharashtra
and anr. ...Respondents.

Mr. Vaidehi Kamat for the petitioner.
Mr. P.D. Dalvi for respondent No.2.
Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.

DATE: 19TH APRIL, 2005

P.C.:

1. Heard the learned Counsel for the petitioner and

the learned counsel for respondent No.2.

2. Petitioners are arrayed as an accused in a Criminal Complaint filed by respondent No.2 in the Court of 3rd Joint J.M.F.C., Ulhasnagar under section 138 of the Negotiable Instruments Act. Petitioners had filed an application for recalling the process in the Court of J.M.F.C. In the said application, it was contended that the petitioners had not obtained loan from the complainant in their individual capacity but in their legal capacity on behalf of Vinayak Magas Vargiya Mazdoor Kamgar Sahakari Sanghathan which is a Society registered under the provisions of law having

its Office at Thane. It is contended that this Society had an account in Thane District Central Co-operative Bank. However, the account was closed as the business of the Society was carried on by Regal Construction having their office at Ulhasnagar. It is further submitted that the accused were not the office bearers at the time of presentation of the cheque and that the cheque was presented in the account of the Society and, therefore, Society was a necessary party. It is further contended that the accused had informed the complainant by sending a telegram dated 21/7/2000 that the Regal Construction were carrying on the business of the Society. The learned J.M.F.C., Ulhasnagar allowed the application of the accused and recalled the process and the complaint was dismissed. Against this order, complainant preferred Revision Application before the Sessions Court which allowed the Revision Application setting aside the order of the Trial Court and directed the Trial Court to proceed in accordance with law. Against the said Judgment and Order passed by the Revisional Court, petitioners have filed the present Criminal Writ Petition.

3. The learned Counsel appearing on behalf of the respondent No.2 has submitted on instructions received

from his client that his client does not wish the proceed against petitioner No.1 as he had not signed the cheque. It is submitted by the learned Counsel for the petitioners that since they are no longer office bearers of the Society and since the complainant had not made the Society as an accused, the complaint against the petitioners was not maintainable. It is further submitted that the complainant was aware that the affairs of the Society were being carried on by the Regal Construction and, therefore, petitioners were already discharged from the liability to pay the loan.

4. The learned Counsel appearing for respondent No.2 vehemently opposed the submissions made by the learned Counsel for the petitioners. He submitted that the contentions raised by the petitioners would be decided by the Trial Court only after evidence is adduced by both the parties. It is submitted that the Sessions Court had rightly held that the contentions raised by the petitioners could be decided only after the evidence is led by both the parties.

5. The submissions made by the learned Counsel appearing on behalf of the petitioners will have to be accepted. From the perusal of the complaint, it can

be seen that the complainant had merely stated that the accused are the Office bearers and running a Co-operative Society and in the entire complaint no role has been assigned to any of the accused. In para 3 of the complaint, it is mentioned that the accused issued cheque dated 3/5/2000. It is not stated in the complaint which accused had signed the cheque and it is not specified in the complaint as to who was in-charge and in control of the day-to-day affairs of the Co-operative Society. Thus, in the absence of any averments regarding the role played by the accused and in the absence of averments regarding who was in charge and running the affairs of the Society, no case is made out against the petitioners - accused.

6. Accordingly, the judgement and Order of the Sessions Court is set aside and the Order of the Magistrate recalling the process below Exhibit-12 and below Exhibit-19 is confirmed.

7. Criminal Writ Petition is allowed in the above terms.

V.M. KANADE, J.